

Yukiko Takita
Serial No.: 09/816,139
Response to Office Action dated October 20, 2005

REMARKS

Reconsideration and allowance of the subject patent application are respectfully requested.

Claims 1-4, 6, 10-32, 34, 35 and 42 were rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Hylton (U.S. Patent No. 5,613,190).

Hylton describes wireless on-premise distribution of a 1.5 mbits/s downstream video information channel and a two-way 16 kbits/s control channel using an ADSL architecture. Although the office action acknowledges that Hylton does not expressly disclose a content reception apparatus that is unable to reproduce content while the apparatus is outside a specified physical area and unable to receive the claimed continuation signal, the Examiner maintains that it would have been obvious to do so.

Claim 1 is directed to a content distribution system in which a content distribution apparatus distributes only within a specified physical area a continuation signal for enabling content to be reproduced continuously, and the content reception apparatus is unable to reproduce the content while the content reception apparatus is outside the specified physical area and unable to receive the continuation signal. As described in connection with a non-limiting, illustrative example embodiment:

...a user entering pseudo closed space 4 can receive refresh signal RF by means of reception apparatus 2 as long as the user is in pseudo closed space 4. The user can thus receive, reproduce and watch content 5 by reception apparatus 2. When the user carrying reception apparatus 2 leaves pseudo closed space 4, the user cannot receive refresh signal RF by means of reception apparatus 2 and accordingly cannot reproduce content 5. In this way, it is possible to prevent the user from taking content 5 out of pseudo closed space 4 without permission. Of course, once the user enters pseudo closed space 4 again, the user can resume reception of refresh signal RF and thus reproduce content 5. Specification, page 13, lines 23-32.

Among other things, Hylton does not disclose or suggest the claimed continuation signal. In this regard, the office action makes reference to the disclosure of a status interrogation signal at col. 22, line 66 to col. 23, line 14 of Hylton. However, this status interrogation signal is not a signal that enables content to be reproduced, nor is the ability

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to reproduce content dependent on whether the status interrogation is received as specified in claim 1. More specifically, the status interrogation signal is described as a signal sent to a DET (digital entertainment terminal) so that the DET status can be determined. However, there is no description that this interrogation signal enables any feature of the DET such as its ability to reproduce content or that the failure to receive an interrogation signal inhibits the output of content. The interrogation signal is not a "continuation signal" even under the definition of "continuation signal" set forth on page 3 of the office action inasmuch the interrogation signal does not "allow the receiver to reproduce content." Nor is it a signal that may "accomplish continuous reproduction of relevant content" as set forth on page 5 of the office action. Instead, the interrogation signal "can be used to check the status of communications to the individual DET's."

The office action alleges that col. 23, lines 11-14 Hylton suggests that the content reception apparatus may not be able to receive any signals from the content distribution apparatus. However, col. 23, lines 11-14 of Hylton do not describe failure to receive a signal. Rather they describe failure to respond to an interrogation signal. In any event, there is nothing here that describes or suggests that the result of failing to receive an interrogation signal is the disabling of content reproduction by the DET.

Because Hylton does not disclose a continuation signal as claimed, Hylton cannot make claim 1 or any claim dependent therefrom obvious.

Claim 1 further specifies that the content reception apparatus is a portable information terminal. See by way of example without limitation page 11, lines 1-2 of the subject patent application. The DETs of Hylton are not disclosed as being portable, nor is there any suggestion to do so. For this additional and independent reason, Hylton does not make claim 1 or any claim dependent therefrom obvious.

Independent claims 10, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 42 also specify a continuation/refresh signal and a portable information terminal. For reasons similar to those advanced above with respect to claim 1, Applicant respectfully submits that these claims and the claims that depend therefrom likewise are not made obvious by Hylton.

Claims 7, 33, 36-41 and 43 were rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Hylton in view of Examiner's Official Notice.

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For each of claims 7, 33, 36-41 and 43, the office action simply takes "Official Notice" of features that are admitted to be missing from Hylton. The office action further contends that while Applicant can traverse the taking of official notice and request that the examiner cite a reference in support of his contentions, some explanation (i.e., not merely a "bald challenge") must be provided as to why official notice is not properly taken.

First, Applicant respectfully submits that the office action is attempting to improperly shift the USPTO's burden of demonstrating obviousness. It is incumbent upon the USPTO to demonstrate obviousness by documentary evidence, not for the applicant to demonstrate non-obviousness. The reliance in the office action on "Official Notice" is tantamount to an admission that the features of these claims cannot be found in the prior art of record and thus the "Official notice" constitutes the basis of the rejection of these claims. As explained in MPEP Section 2144.03(c):

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated "'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation...The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.").

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Second, in several instances, the feature of which the office action takes official notice has little or no apparent relationship to the relevant claim limitation. For example, in connection with claim 7, the office action takes official notice that "updating information in a menu based on information contained in a database was well known in the art ..." Even assuming for the sake of argument the office action is correct, Applicant does not see how this relates to the number of the contents which can be distributed being predetermined for each of a plurality of types as specified in claim 7.

With respect to claim 7, Hylton fails to disclose or suggest the features of claim 2 (from which claim 7 depends) as described above. Further, Applicant traverses the Official Notice taken in the office action and requests that a document be provided to support the contention about updating of information in a menu. Among other things, there is no showing that such a feature, even if known generally, was known in the context of the claims. Moreover, as noted above, even assuming for the sake of argument that the contention in the office action is correct, Applicant does not see how this menu feature relates to the claimed concept that the number of the contents which can be distributed is predetermined for each of a plurality of types.

With respect to claims 33 and 41¹, Hylton fails to disclose or suggest the concepts of claim 25 (from which claim 33 depends) or the concepts of claim 41 relating to a refresh signal. Further, Applicant traverses the Official Notice taken in the office action and requests that a document be provided to support the contention that it was well-known to limit the number of content types to a maximum amount of receivers in order to conserve bandwidth in a network streaming system. Applicant observes that, among other things, there is no showing that such limiting would actually conserve bandwidth. It is quite possible, for example, that a data stream of many content types could use less bandwidth than a data stream of one content type.

¹ The office action contends that claim 41 corresponds to a combination of other claims including claim 33. See 10/20/05 Office Action, page 17.

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With respect to claims 36 and 38-40,² Hylton fails to disclose the concept of setting a timer based on a refresh signal and reproducing content only during a time period specified by the timer. Applicant traverses the Official Notice taken in the office action and requests that a document be provided to support the contention that it was well-known to use a timeout counter to determine whether a receiver is able to receive signals from a distributor in a wireless network. While timers are of course known, there is no evidence showing that the use of a timer in the manner specified in claim 36 would have been obvious.

With respect to claims 37 and 43³, Applicant traverses the Official Notice taken in the office action and requests that a document be provided to support the contention that it was well-known to store received streaming content in a buffer and clear the buffer in the event of a signal interruption in a content streaming network system. Moreover, Applicants do not see how this contention, even if correct, discloses or suggests the subject matter of the claim 37 in which content is deleted based on a timer.

Claims 8 and 9 were rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Hylton in view of Lotspiech (U.S. Patent No. 6,748,539).

Lotspiech is applied in the office action as allegedly showing the features of claims 8 and 9. Even if Lotspiech's disclosure of rented content could somehow be forcedly combined with Hylton, Lotspiech does not remedy the deficiencies of Hylton with respect to claim 2, from which claims 8 and 9 depend.

New claim 44 depends from claim 1 and believed to be allowable because of this dependency and the other patentable features incorporated therein.


² The office action contends that claims 38-40 contains "substantially the same limitations" as claim 36. See 10/20/05 Office Action, page 15.

³ The office action contends that claim 43 contains "substantially the same limitations" as claim 37. See 10/20/05 Office Action, page 16.

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The pending claims are believed to be allowable and favorable office action is respectfully requested.

Respectfully submitted,
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